

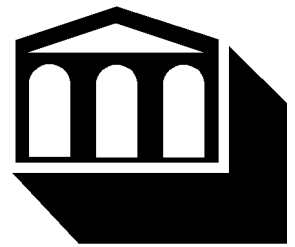
# SEXUAL ASSAULT BENCHBOOK

2002-2008

MICHIGAN JUDICIAL INSTITUTE  
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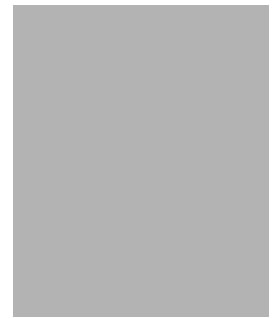
# Sexual Assault Benchbook

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## **Michigan Judicial Institute**

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**Michigan Domestic Violence  
Prevention and Treatment Board**



By **Thomas Smith, J.D.**

With assistance from the  
**Sexual Assault Benchbook  
Advisory Committee**

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The research done on this benchbook is current through July 31, 2002. This benchbook is not intended to be an authoritative statement by the Justices of the Michigan Supreme Court regarding any of the substantive issues discussed. However, it does represent the consensus of the author and the advisory committee members regarding these issues.

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## Using This Benchbook

The *Sexual Assault Benchbook* addresses Michigan law governing sexual assault and includes discussion on understanding the background of sexual violence (including perpetrators and victims), the Criminal Sexual Conduct Act (including other related crimes), bond and discovery, specialized procedures for trial courts, evidentiary considerations, post-conviction considerations, civil remedies (including a brief discussion on the Crime Victim Services Commission), and sex offender identification and profiling systems.

Grant-funding restrictions specifically limited the scope of this Benchbook to sexual assaults committed by adults against adults. As such, this Benchbook's primary focus is on adult offenders and adult victims. However, this Benchbook does discuss, when relevant to a particular case or legal issue, juvenile offenders, child victims, and child sexual abuse offenses. General information on child sexual abuse is available at the following websites:

- (1) <http://www.prevent-abuse-now.com/law.htm> (last visited July 25, 2002);
- (2) <http://www.ojp.usdoj.gov/bjs/abstract/saycrle.htm> (last visited July 25, 2002);
- (3) <http://www.calib.com/nccanch/pubs/index.cfm> (last visited July 25, 2002);
- (4) <http://www.ispcan.org/resources.htm> (last visited July 25, 2002);
- (5) [http://www.preventchildabuse.org/learn\\_more/research.html](http://www.preventchildabuse.org/learn_more/research.html) (last visited July 25, 2002); and
- (6) <http://www.jimhopper.com/abstats> (last visited July 25, 2002).

This Benchbook cites, quotes, and paraphrases numerous Criminal Jury Instructions (CJI2d). This is especially true in Chapters 2, 3, and 4 where criminal sexual conduct crimes and other related offenses (including defenses) are discussed in detail. The reader should note that while most of the elements listed in these chapters are not quoted, they typically are taken word for word from the relevant CJI2d jury instruction. By not quoting the elements, the author was able to combine elements and words, as needed, to save space. Additional space was saved by not repeating the "burden of proof" instruction, which typically is listed as the first element (and first numbered paragraph) of the CJI2d's criminal offenses. Any ambiguity or misunderstanding regarding the elements listed in this Benchbook should be resolved by consulting the CJI2d or relevant case law. Regarding use of the CJI2d, the reader should note that the Michigan Supreme Court urges, but does not require, trial courts to use the standard criminal jury instructions. See *People v Sullivan*, 231 Mich App 510, 520, n 1 (1998); Administrative Order No. 1977-1, 399 Mich lxxii (1977); and Administrative Order No. 1978-5, 402 Mich lxxxvii (1978). If recent legislation or case law conflicts with the standard jury instruction, or any portion of it, the legislation or case law takes precedence over the jury instruction. *People v Stephan*, 241 Mich App 482, 495 (2000).

This Benchbook frequently references *The Response to Sexual Assault: Removing Barriers to Services and Justice* (April, 2001), a report produced by the Michigan Sexual Assault Systems Response Task Force. Copies of this report are available from the Michigan Coalition Against Domestic and Sexual Violence, located at 3893 Okemos Road, Suite B-2, Okemos, Michigan 48824, telephone 517-347-7000. Its website address is <http://www.mcadsv.org> (last visited July 25, 2002).

Finally, the color teal is depicted in this Benchbook's cover art. Teal is the color that signifies the nationally-recognized Sexual Assault Awareness Month (SAAM) of April. Information on SAAM appears at <http://www.nsvrc.org> (last visited July 25, 2002).

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## Acknowledgments

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Work on this Benchbook was overseen by an Advisory Committee comprised of judges, court personnel, prosecutors, private attorneys, and social service providers. Advisory Committee members reviewed those portions of the text that addressed their areas of expertise, and provided some “best practice” suggestions for this Benchbook. These “best practice” suggestions represent the Committee members’ best professional judgments. They do not constitute recommendations from the Michigan Supreme Court, and should not be viewed as definitive in all cases. The Committee encourages each local court to develop individual policies for sexual assault cases in consultation with other service providers in its own community. The Advisory Committee members for this Benchbook were as follows:

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Thomas Smith, MJI Research Attorney, researched and wrote this benchbook. Tobin Miller, Judicial Education Team/Publications Team Program Manager, served as the project manager. Rhoda Mattson served as copy editor and cite and quote checker. Brian Zubel, Training Attorney, Prosecuting Attorneys Coordinating Council (PACC), Michigan Department of Attorney General, and Charlie Barna, Supervisor, Biology and CODIS State Administrator, Michigan State Police Forensic Laboratory, reviewed the sections on DNA testing and evidence. Joseph Harte, MJI Extern, assisted in the research and drafting of selected areas of the Benchbook. Mary Ann McDaid, MJI Multimedia Specialist, provided the cover art and page layout design, and coordinated reproduction and publishing. Lori Ann Sheets, MJI Program Assistant, organized Advisory Committee meetings and distributed draft chapters to the committee members.

The Michigan Judicial Institute was created in 1977 by the Michigan Supreme Court. MJI is responsible for providing educational programs and written materials for Michigan judges and court personnel. In addition to formal seminar offerings, MJI is engaged in a broad range of publication activities, services, and projects that are designed to enhance the professional skills of all those serving in the Michigan court system. MJI welcomes comments and suggestions. Please send them to: **Michigan Judicial Institute, P.O. Box 30205, Lansing, MI 48909, (517) 334-7805.**

# Sexual Assault Benchbook (2002-2008)

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